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In re Application of
Paul Kelley, et al.
Application No. 10/678,190
Filed: October 6, 2003
For: PRODUCT SUPPORT
AND DISPENSING SYSTEM
FOR A VENDING MACHINE

DECISION ON PETITION
UNDER 37 CFR §1.144.

This is a decision on the petition under 37 CFR 1.144 filed June 11, 2007, for review of a Restriction Requirement mailed October 20, 2006.

The petition is GRANTED.

This application was filed October 6, 2003 and included claims 1-16 directed toward "A vending machine", and claims 17-21 directed toward "A method of adjusting a product dispensing system for a vending machine to accommodate various sized product containers". On July 5, 2006, the Examiner mailed a Restriction Requirement between Invention I, recited in claims 1-9, Invention II recited in claims 10-16, and Invention III, recited in claims 17-21. The Examiner alleged that Inventions I, II, and III, are related as sub-combinations disclosed as usable together in a single combination. In response to the Restriction Requirement, on August 4, 2006, Petitioner elected Invention I, but traversed the Restriction Requirement as it relates to Inventions I and II. On August 2, 2006 a telephonic interview was held with the Petitioner and the Examiner in which the Examiner indicated "Claims 2 and 10 are distinct subcombinations, claim 1 is an evidence claim, so restriction is proper between groups I and II in accord with MPEP 805cIII." On October 20, 2006, the Examiner mailed a new Restriction Requirement between Invention I, recited in claim 1, Invention II, recited in claims 2-9, Invention III, recited in claims 10-16, and Invention IV, recited in claims 17-21. The Examiner again alleged that Inventions I, II, III, and IV are related as sub-combinations disclosed as usable together in a single combination. In response to the second Restriction Requirement, Petitioner elected Invention II with traverse. On February 8, 2007 the Examiner issued a non-final rejection and made the second Restriction Requirement Final. On June 11, 2007,

Petitioner filed a Petition pursuant to 37 C.F.R. § 1.144 for review of the Restriction Requirement mailed October 20, 2006.

M.P.E.P. § 806.05(d) states, "Two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually restrictable when the subcombinations do not overlap in scope and are not obvious variants."

In this application, claims 1-16 are directed toward "A vending machine". Therefore, at least claims 1-16 overlap in scope and are not restrictable as subcombinations disclosed as usable together in a single combination. The second Restriction Requirement is improper, and it is not in accordance with the guidelines in M.P.E.P. § 806.05(d). Moreover, claims 1-16 include three independent apparatus claims, and it does not appear that these three independent claims can be restricted from each other. However, claims 17-21 are process claims and may be restrictable from claims 1-16.

The Restriction Requirement mailed October 20, 2006 is hereby vacated. This application is being forwarded to the Examiner for continued prosecution in accordance with this Decision. If the examiner determines that a requirement for restriction should be made in this application, the examiner must provide a clear and detailed record of the requirement by following the outline of Letter for Restriction Requirement provided in M.P.E.P. § 817.

This application is being forwarded to the examiner of record.

Any questions regarding this Decision should be directed to Patrick Mackey at (571) 272-6916.



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PM/SNM: 4/29/08

SM